

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion into Competition for  
Local Exchange Service.

Rulemaking 95-04-043  
(Filed April 26, 1995)

Order Instituting Investigation on the  
Commission's Own Motion into Competition for  
Local Exchange Service.

Investigation 95-04-044  
(Filed April 26, 1995)

**ADMINISTRATIVE LAW JUDGE'S RULING  
SOLICITING COMMENTS ON NINE-MONTH REVIEW PHASE OF  
FCC TRIENNIAL REVIEW ORDER**

**I. Introduction**

This ruling provides notice and opportunity to comment concerning the nine-month proceeding to be conducted in this rulemaking concerning impairment of competition in serving "mass market" customers<sup>1</sup> pursuant to the Federal Communications Commission (FCC) Triennial Review Order released on August 21, 2003.

By ruling dated July 30, 2003, proceedings were initiated in this rulemaking in response to the FCC Triennial Review Order. As prescribed in the

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<sup>1</sup> As defined by the FCC Order, mass market customers consist of analog voice customers that purchase only a limited number of traditional phone lines, and can only be economically served via DS0 loops.

FCC Order, state commissions must conduct two separate inquiries concerning impairment of competition in relation to elimination of unbundled switching access through the incumbent local exchange carrier (ILEC).

First, with respect to switches serving DS1 capacity customers, the FCC found no impairment even without access to unbundled switching, subject to rebuttal after state commission review. Inquiry concerning impairment issues relating to DS1 customers is addressed in separate 90-day phase of this proceeding, as covered by the ruling dated July 30, 2003.

Today's ruling separately addresses procedural issues for the second phase of inquiry mandated by the FCC Order relating to impairment of competition in serving mass market customers. The FCC Order allocates a nine-month period for state commissions to conduct this second phase inquiry relating to mass market customers, covering issues highlighted below.

## **II. Scope of Issues in Nine-Month Proceeding**

The scope of issues to be addressed in the nine-month proceeding relating to impairment of competition in serving mass market customers is circumscribed by the FCC Order. The FCC finds on a national level that carriers are impaired in their ability to serve mass market customers without access to specified unbundled network elements. The FCC specifically renders impairment findings in this regard with respect to local loops, local circuit switching, and dedicated transport.

The FCC findings of mass market impairment, however, are subject to a more granular inquiry to be conducted by state commissions based on analysis of designated triggers and operational and economic criteria regarding facilities-based entry on a market-by-market basis. The FCC allows a nine-month period from the effective date of the Order for proceedings to identify markets where

competing carriers are not impaired without access to the specified unbundled network elements, and to adopt measures addressing any impairment of competition in serving mass market customers.

**a. Evaluation Based on Triggering Criteria**

State commissions will follow a two-step process in determining whether “no impairment” exists in each defined market. First, states shall apply triggering criteria to determine whether further inquiry of impairment is required. Triggering criteria focus on (a) the degree of carrier self-provisioning and (b) of wholesalers offering independent network element capacity. If the triggering criteria are satisfied, no further inquiry will be required in the designated market. If the trigger criteria are not satisfied, the inquiry must proceed to the second step where relevant operational and economic criteria are evaluated to determine whether market conditions are conducive to competitive entry, or whether carriers are impaired without access to the designated network elements. In exceptional circumstances, states may identify specific markets that facially satisfy the self-provisioning trigger but where some significant entry barrier exists foreclosing carriers from serving mass market customers even with self-provisioning.

**b. Definition of Relevant Market**

The two-step inquiry identified by the FCC is to be applied on a market-by-market basis. The FCC gives discretion to the states to define the parameters of each market to be examined, but the market may not be defined simply as encompassing the entire state. On the other hand, the market is not to be defined so narrowly as to preclude a carrier from being able to utilize scale and scope economies in serving a wider market.

**c. Need for and Development of Batch Cut Process**

One significant factor identified in the FCC impairment findings is the process of physical transfer of a customer's line from the incumbent LEC switch to the competitive LEC switch which currently requires a coordinated loop cut over or "hot cut" for each customer's line. The FCC's finding of impairment is based on the combined effects of all aspects of the hot cut process on competitors' ability to serve mass market voice customers.

The FCC requires that state commissions approve within nine months of the effective date of the Order a "batch cut" migration process to be implemented by ILECs that will address the costs and timeliness of the hot cut process. Issues to be addressed with such a "batch cut" process include deciding the appropriate number of loops to include in each batch, and specific processes to be performed in performing a batch cut. State commissions are also to adopt TELRIC rates for the batch cut activities they approve (to the extent such rates have not already been adopted).

Alternatively, if the state concludes that the absence of a batch cut process does not impair a particular market, then no batch cut process will be needed for that market. In that instance, state commissions must make detailed findings explaining why such a batch cut process is not necessary in the particular market to avoid impairment, based on applying the criteria set forth in the Order.

**d. Identification of Operational and Economic Barriers**

The FCC also calls upon the states to examine evidence of sources of impairment as a result of operational and economic barriers other than hot cuts. Identified operational barriers may include absence of sufficient collocation space or ILEC failure to provide timely cross connections. In addition, the states

are expected to identify markets where requesting carriers are not impaired without access to unbundled designated network elements.

**e. “Rolling Access” to Unbundled Switching**

If the state commission, after completing the above analysis, concurs that requesting carriers are impaired in serving mass market customers, the next step is to consider whether the use of “rolling,” or transitional, access to unbundled local circuit switching would address impairment in that market. The FCC finds that where transitional access would cure any impairment that would otherwise undermine competition, the state must implement such “rolling” access rather than perpetuating permanent access to the switching element. The FCC requires that the transitional period for such rolling access shall be no shorter than 90 days, but may be longer than 90 days at the discretion of the state commission.

**f. Implementation Transition Plan**

To the extent that a state commission finds no impairment in serving mass market customers in a particular market, the FCC requires carriers to submit an implementation transition plan within two months of the finding to migrate the embedded unbundled local switching customer base to an alternative service arrangement without unbundled switching.

**III. Solicitation of Comments**

This ruling is issued to provide an opportunity for parties to provide input concerning the nature, scope, scheduling, sequencing, and prioritization of issues for this nine-month phase based on the matters to be decided as outlined above. Parties shall present proposals regarding the most efficient manner to create the record for the nine-month proceeding. Parties proposing evidentiary hearings to develop the necessary record for this phase of the proceeding shall identify the material factual issues in dispute that they believe warrant such hearings.

Proceedings involving evidentiary hearings require a longer processing time. Thus, in view of the limited nine-month period required by the FCC for completing this phase, parties are encouraged to suggest ways to shorten the time for any evidentiary hearings, or to develop the record through means other than evidentiary hearings. For example, workshops, stipulations, and other streamlining of processes may offer possible ways to facilitate and expedite the proceeding. Following receipt of comments, a further ruling will be issued either setting a prehearing conference or otherwise setting a schedule for this phase.

#### **IV. Initiation of Discovery**

Parties should not delay initiating any necessary discovery in connection with this phase of the proceeding, but should proceed immediately to formulate discovery needs and to exchange data requests and responses, as necessary. As noted in the FCC Order, relevant data for purposes of this inquiry includes items such as UNE rates, retail rates, other revenue opportunities, wire center sizes, equipment costs, and other overhead or marketing costs. To the extent discovery disputes arise that cannot be resolved between the parties on a meet-and-confer basis, parties should promptly bring such disputes to the Commission by filing an appropriate motion to compel in accordance with applicable law and motion procedures.

#### **V. Service of this Ruling**

In the interests of assuring that all potential parties that may have an interest in this phase of the proceeding are given notice and opportunity to comment, in addition to regular service, a copy of this ruling shall also be served on all certificated telecommunications carriers within California. As an additional measure, the ruling shall be served on the service lists in the two major UNE proceedings before the Commission. These two proceedings are in

A.01-02-024 (for SBC Pacific) and the Verizon UNE phase of R.93-04-043.

Anyone served a copy of this ruling that is not already a party of record in R.95-04-043, but that wishes to actively participate or at least keep apprised of developments relating to the nine-month review process outline should either request to become a party in R.95-04-043 or to be placed on the “information-only” service list, as appropriate. Subsequent rulings relating to this phase of the proceeding shall only be served on the R.95-04-043 service list.

**IT IS RULED** that:

1. Comments are hereby solicited concerning issues as outlined above relating to the scope and scheduling of the nine-month proceeding to comply with the requirements of the FCC Order concerning impairment of competition in serving mass market customers.
2. Opening comments in response to this ruling shall be filed and served on September 12, 2003 and reply comments shall be filed and served on September 19, 2003.
3. In addition to regular service, a copy of this ruling shall also be served on all active certificated telecommunications carriers within California, as well as on parties on the service lists in A.01-02-024 (for SBC Pacific) and the Verizon UNE phase of R.93-04-003.
4. Anyone served a copy of this ruling that is not already a party of record in R.95-04-043, but that wishes to actively participate or at least keep apprised of developments relating to the nine-month review process should either request to become a party in R.95-04-043 or to be placed on the “information-only” service list, as appropriate.

5. Further notice of scheduling and process for this phase of the proceeding shall be issued by ruling or notice of prehearing conference following receipt of comments.



6. Comments in response to this ruling need be served only on parties in R.95-04-043.

Dated August 29, 2003, in San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer  
Administrative Law Judge

## CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Soliciting Comments on Nine-Month Review Phase of FCC Triennial Review Order on all parties of record in this proceeding and in A.01-02-024 and R.93-04-003 and all certificated Teleco Carriers or their attorneys of record.

Dated August 29, 2003, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

## N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074,

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TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.